COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 218 of 2002

New India Assurance Company Ltd.

… **Appellant.**

Versus

Smt. Haruli Devi
and others. ... **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 14-8-2002, passed in M.A.C. Case No. 53 of 2000, Smt. Haruli Devi Vs. Anand Singh Bagadwal and another, by the Motor Accident Claims Tribunal/ District Judge, Almora, ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 2,13,500/- along with interest @ 9% per annum in favour of the claimants-respondent no.1 as against the Opposite Party No.2-appellant as mentioned in the impugned order. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the judgment and award under appeal is perverse because no driving licence was produced before the Tribunal; that the investigation report on record proves that the driver was in intoxicated condition at the time of accident, showing clear cut breach of the policy condition.

Brief facts of the case are that Jagat Singh **(*the deceased*)** sustained grievous injuries in a motor accident involving K.M.O.U. Bus No. UP-22/7387 and died on spot. It is alleged in

the claim petition that the deceased was travelling by the said bus on the fateful day. When the vehicle reached near Hawalbagh, it fell down in a deep ***Khadd*** due to rash and negligent driving by its driver with the result deceased sustained grievous injuries and died on the spot. Post Mortem of the dead body was conducted. Deceased was aged 32 years and was earning Rs. 2500/- per month from agriculture. The claimants being the dependents of the deceased, Haruli Devi, widow, has preferred claim petition under Section 166 of the Act, for compensation worth Rs. 5,05,000/- for the death of the deceased and prayer for interim compensation of Rs. 50,000/- under Section 140 of the Act.

O.P.No.1, the owner of the bus, filed his written statement and contested the claim petition and admitted himself to be owner of the bus in question and that the bus was duly insured with the Insurance Company. The liability if any to pay the compensation rests on the Insurance Company, O.P. No.2. It has also been asserted that the accident had occurred due to mechanical failure of the brakes and not as a result of negligence on the part of the driver.

The Insurance Company filed written statement and contested the claim petition. Only this much has been admitted that the bus involved in the accident was insured with it. In additional pleas, it has been contended that the claimant has to file all necessary documents. Plea of collusion between the claimants and the insured has also been taken, therefore, the Insurance Company has a right to contest the case on the defences available to the person against whom claim is made. Plea of compliance of Section 64 of the Insurance Act has also been taken.

On the pleadings of the parties, the learned Tribunal framed two Issues in the case. Issue No. 1 related to rash and negligent driving by the driver of the K.M.O.U. bus involved in the accident resulting in injuries and death of the deceased. Issue No. 2

related relief and compensation. It is, however, clear that the Insurance Company has not been granted permission under Section 170(b) of the act relating to defences other than those enumerated under Section 149(2) of the Act.

After considering the evidence on record, the learned Tribunal came to the conclusion that the accident in question resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the K.M.O.U. bus in question. It has been observed by the learned Tribunal that the driver concerned was holding a valid driving licence at the time of accident. The learned Tribunal has observed that the income of the deceased as mentioned in the petition has not been proved by means of documentary evidence, i.e. Khatauni, Khasara, etc. But it has been held that as a labour, the deceased would have been earning Rs. 50/- per day as prescribed by the government as daily wages and thereby annual loss of income has been determined at Rs. 18,000/-. The Tribunal then applied multiplier of ***17*** considering the age of the deceased, i.e. 32 years, meaning thereby the deceased comes in the age group of 30-35 years. Thereafter, to determine just amount of compensation, the Tribunal has worked out total loss of income 18,000/- x 17 = 3,06,000/- and 1/3rd of the same was deducted towards personal expenses of the deceased. Ultimately, the claim petition has been decreed for compensation worth Rs. 2,13,500/-, as mentioned earlier, along with simple interest @ 9% per annum.

We have heard learned counsel for the appellant, Mr. Tanveer Alam Khan, and have carefully examined the material before us including the impugned judgment and order.

It has been submitted on behalf of the appellant in the appeal that the driver was found to have consumed alcohol and was in the state of intoxication at the time of accident. We have been referred to Annexure-4 and Annexure-5 to show that the driver was

under the influence of alcohol and thereby the accident was caused. Annexure-4 is the alleged statement of the driver Bhuwan Singh, who was driving the bus at the relevant time. The said ***Anneuxre-4*** has been read over by us. There is nothing to indicate that the driver had consumed alcohol on the date of accident. In this alleged statement, the driver had stated that on the fateful day, he had not consumed alcohol; but had taken liquor on the next day evening. The contention of the learned counsel does not at all find support from this document. Another statement relied on by the learned counsel is the alleged statement of one Narain Singh Negi, who appears to be an eye witness. In this statement, he has categorically stated that driver had not consumed alcohol throughout the journey. This paper too does not support the argument of the learned counsel. Learned counsel has relied on newspaper cutting (Anneuxre-5). Although there is merely a mention that it is said that the driver Bhuwan Singh had consumed alcohol, but nothing more has been disclosed therein so as to support the contention of the learned counsel for the appellant. Strangely enough, no such plea has been taken in the written statement filed by the Insurance Company which has been filed before the Tribunal long after the alleged newspaper news and statements of driver and one Narain Singh, as referred to above. Moreover, no evidence has been led by the Insurance Company before the learned Tribunal to disprove the fact that the driver of the offending bus was not holding a valid driving licence. In the absence of any categorical evidence led by the appellant and in view of clear cut finding of the Tribunal that the driver was holding a valid driving licence, the argument of the learned counsel for the appellant cannot stand and is without legs. There is no infirmity or illegality in the judgment and award, under appeal, therefore, we have no option but to uphold the findings arrived at by the Tribunal.

Moreover, the relevant provisions of the Act vis-à-vis breach of policy condition, e.g., disqualification of driver, etc. have been elaborately considered by the Apex Court in the case of

"National Insurance Company Limited Vs. Swaran Singh and others" [2004(3), Supreme Court Cases, 297] and in paragraph 110(iii) of the judgment, the Apex Court has held as under:-

> ***"The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."***

In view of aforesaid provision of law down by the Apex Court, the Insurance Company, if it so desires, may file objections before the executing court after satisfying the entire decretal amount including interest. The Motor Accident Claims Tribunal shall then dispose of the objections regarding breach of policy conditions, in accordance with law after hearing both the parties, i.e. insured and the insurer, if so raised by the appellant, for redressal of its grievance/dispute between the insured and the insurer.

Ultimately, the appeal fails on merits.

With the aforesaid observations, the appeal is disposed of finally. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned and the Tribunal is further directed to inform the claimant-respondents to withdraw the amount so deposited.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP